

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6015 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

MI UMARJI

Versus

PRESIDENT-P'MAHA MULSIM EDU SCOEITY

Appearance:

MR DM THAKKAR for Petitioner

MR VM PANCHOLI for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/03/2000

ORAL JUDGEMENT

1. The petitioner, an employee of a School run by
the Panchmahal Muslim Education Society at Godhra,
District Panchmahals, challenges in this petition under
Article 226 of the Constitution, the order of the Gujarat
Secondary Education Tribunal, Ahmedabad dated 2.8.1989 in
Application No. 265 of 1987. Under this order

application aforesaid filed by the petitioner came to be rejected. In the application aforesaid, the petitioner prayed that on the availability of the post of Senior Clerk in the School, management be directed to promote him. This Special Civil Application came up for hearing in the Court of 19th August, 1989. The Courts order reads as under :

"Notice pending admission and interim relief returnable on 12.9.1989.

Ad-interim relief to the effect that status quo be maintained i.e. in case no other clerk is promoted as Senior Clerk, the respondent should not promote any other clerk as Senior Clerk till 13.9.1989.

Direct Service."

On 13.9.1989 the matter was admitted and the interim order was ordered to be restricted to the effect that the promotion, if any, made shall be subject to result of this petition.

2. The learned counsel for the petitioner contended that overall approach of the Tribunal is perverse. The Regulation No. 20(9) is not applicable to the present matter. This Regulation brought into force with effect from 16th March, 1974. The petitioner passed his S.S.C./Matriculation Examination in the year 1954. He was appointed as Junior Clerk in the School on 21st June, 1968. On the date of his appointment as Junior Clerk, there was no such requirement of passing the S.S.C. Examination with Maths as a subject for promotion in the cadre. This requirement of the educational qualification could not have been made applicable for the employees, who have entered in the services prior to 16th March, 1974.

3. Shri Pancholi learned counsel for the respondent no.3 submitted that promotion is a mode of recruitment/appointment and this appointment is to be made only after 16th March, 1974 and the candidate has to possess the requisite qualification i.e. S.S.C. certificate with Maths. This minimum qualification prescribed for the appointment to the clerical cadre in this case is applicable to the appointments to be made by the promotion. It is next contended that distinction sought to be drawn in initial appointment and appointment by promotion is wholly illusory. Lastly, it is urged that the authority has all the powers to amend the rules prescribing the educational qualifications for appointment to the posts.

4. I have given my thoughtful consideration to the rival contentions raised by the learned counsel for the parties.

5. Regulation No. 20(9) is brought into force with effect from 16th March, 1974. Retrospective effect was not given to this Regulation. All those persons appointed in the clerical cadre prior to 16th March, 1974 were not taken to be ineligible for the promotion. On the day on which the petitioner was appointed on the post of Junior Clerk i.e. 21st June, 1968, he was possessing the requisite qualifications as prescribed at the relevant for the appointment to the said post. In the year 1954, when the petitioner passed S.C.C./Matriculation Examination where maths was not one of the subject. Only from 16th March, 1974, the eligibility for appointment in the clerical cadre has been changed and the minimum qualifications which a candidate is required to possess is S.C.C. certificate with Maths subject. What is contended by the learned counsel for the respondent no.3 and what decision given by the Tribunal is accepted then those clerks, who have been appointed prior to 16th March, 1974, though they were eligible for appointment become ineligible for appointment by promotion. It is true that promotion is one of the mode of the appointment to the higher post of clerical cadre, but eligibility for appointment by promotion may not be identical to eligibility for appointment by direct recruitment. Regulation 20(9) has to be given an interpretation which may not be detrimental to the right of consideration for promotion of the employees on the higher post may be clerical cadre who were appointed earlier to 16.3.1974. The meaning and interpretation which is given by the Tribunal to this provision and what is canvassed by the learned counsel for the respondent no.3 in this Court is accepted then, all those S.S.C./Matriculation clerks who have been appointed in the clerical cadre prior to 16th March, 1974 will become ineligible for promotion. They will not get any promotion in future. They will retire from the very post on which they were initially appointed. For promotion, it is nowhere provided in Regulation aforesaid that this requirement of S.S.C. certificate with Maths subject is essential. It is nowhere provided that this provision is to be given effect to in the matter of appointment by promotion. In the promotion excepting some technical posts, the educational qualification may not be laid down for eligibility. Normally eligibility for promotion is of experience of the requisite years in the feeder cadre. The employees who have already acquired sufficient long

experience in the clerical cadre shall be deprived of promotion once for all in case, this provision Regulation 20(9) is given the meaning and interpretation what it is given by Tribunal and contended by the learned counsel for the respondent no.3. It is no more res integra that in service career an employee at least should have two promotional opportunities. The State of Gujarat introduced the scheme of higher pay scale to be given to the employees who are stagnated in a pay scale for non-availability of the promotional chances on completion of 9 years, 18 years and 27 years services respectively. Regulation 20(9) is accepted to mean as what it is stated by the Tribunal and contended by the learned counsel for the respondent no.3, the petitioner and other employees of this category will also not get the benefit of this scheme of higher pay scale of the Government. In that scheme, it is provided that employee concerned should have possessed requisite qualification as prescribed for the promotion for the entitlement of the benefits of higher pay scale.

6. Taking into consideration the total facts of this case, the order of the Tribunal cannot be allowed to stand.

7. In the result, this Special Civil Application succeeds and same is allowed and the order passed by the Tribunal dated 2nd August, 1898 in Application No. 265 of 1987 is quashed and set aside. It is hereby declared that the petitioner is eligible for promotion to the higher post in the clerical cadre which are to be filled in by the promotion. The respondent - school is directed to consider the case of the petitioner for promotion on the next higher post from date on which the post fell vacant and in case, he is found suitable for promotion, he shall be given promotion with all the consequential benefits. Rule is made absolute in terms aforesaid with no order as to costs.

(S.K.Keshote,J)
(Vipul)